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The Gulf War and the Theory of Just War

Resist not evil: whosoever shall smite you on the right cheek,
turn to him the other also.

Matthew 5:39

I consider an unjust war the greatest of all atrocities;
but I esteem a just one as the highest of all human virtues.

John Quincy Adams

Of all the creatures of the earth, only two--ants and men--make war, and only man feels the need to justify it. Over the last two thousand years, a set of criteria for judging whether a war is just or not has emerged, first in the Christian West but then with the spread of European culture and secularization, throughout much of the world. Although seldom formally invoked anymore, these criteria form a basis for international law and to a great degree have been integrated into the world's political psyche. This essay will apply the seven criteria for just war--jus ad bellum--to the US decision to go to war with Iraq in 1991 both to test whether the American decision met the criteria and to see if the criteria are still valid.

Reconciling Ethics and War

War presented a special problem for the founders of Christianity and, later, Islam. Other societies and cultures accepted war as an all but inevitable or natural part of life. Temples and holidays were consecrated to the gods of battle and

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martial arts and courage were often encouraged and honored. Even in some of the so primitive cultures of the Mediterranean and Europe, war was part of the religious experience. For the Norse and Muslim warrior, dying in battle meant paradise. For the Assyrian, Hittites and the Mongols, conquest of territory meant expanding the realm of creation, the world itself.¹

Pre-Christian Tradition

Some in the ancient world tried to put limits on war. Paris' killing of Achilles is hardly held up as commendable. Even the Spartans chose Poseidon over Ares, the god of offensive war, as their patron, while the Athenians opted for Athena, the armored goddess of wisdom, the hearth and defensive war. The "eye for an eye, tooth for a tooth" formula found in the Pentateuch was actually an injunction to limit vengeance and retribution. Plato argued in The Republic that war was a means to an end--peace. War could teach courage but the proper aim of the state was peace not war. Aristotle returned to this theme several times, and Cicero would expand on it and link limiting war to natural law. According to Cicero, wars undertaken without provocation are unjust; "only war waged for revenge or defense can actually be just." In what may have been the earliest statement of how to wage a just war or jus in bello, Cicero went on to argue that a war was unjust if it had not been declared or if the enemy had not been given a chance

¹. See Mircea Eliade, The Sacred and the Profane (New York: Harper and Row, 1959.) Interestingly, the Hebrew tribes probably entered the Middle East as part of the Hittite invasion.

to pay reparations.²

Christian Dilemma

But for the early Christian, the issue was not just or unjust war, offense or defense, but war itself. The Christian was repeatedly enjoined to "turn the other cheek," love his enemy and give good for evil.³ Jesus was the "prince of peace," the Messiah prophesied by Micah and swords would be beaten into plowshares.⁴ For the better part of two centuries, early Christians were pacifists; waging of war was a violation of brotherly love and Christian ethics. By 200 A.D., however, Christians were serving in the Roman army; with the conversion of Constantine in 305 A.D., Christianity became the official religion of the empire and by 403 A.D., only Christians could serve in the imperial army.⁵

It fell to St. Augustine and his teacher, St. Ambrose, to try to reconcile the apparent contradictions between brotherly love and military service. Borrowing from Cicero, Augustine turned to natural law and argued that war was evil but sometimes necessary to avoid or prevent a greater evil. War was justified as long as it

² Arthur F. Homes, ed., War and Christian Ethics (Grand Rapids: Baker Book House Co., 1975), pp. 13-14 and 24-25.

³ See for example Matthew 5:39, 5:44; Romans 12:17-20, 1 Thessalonians 5:15 and 1 Peter 3:9.

⁴ James O. Gara, The Church and War (Washington, D.C.: National Council of Catholic Men, 1967), p. 13.

⁵ Paul Ramsey, War and the Christian Conscience (Durham, N.C.: Duke University Press, 1961), pp. xv-xvii. Ramsey notes that Christian reluctance to serve in the Roman army may have had more to do with inherent Christian anti-imperialism and Roman requirements that they partake in pagan rituals, especially emperor worship than with ethical considerations.

sought peace and justice (including for the enemy), was necessary and fought with mercy. Such a war could even be an act of love, and the good Christian was not only allowed to take part, but be obligated to do so. While he clearly saw defensive war as justifiable, Augustine went so far as to say war of aggression was acceptable if it were carried out by the right authority and waged for a just cause and a right intention.⁶

Augustine's criteria formed the basis of just war theory for the next eight centuries. To a great degree, with the fall of the Roman Empire, the emphasis shifted from jus ad bellum, the "why" of war, to jus in bello, the "how" or means of war. With the barbarian invasions and establishment of new kingdoms, war again became an all too real fact of life, part of a natural process to be regulated, if possible, but not really challenged or debated. The Church itself was a secular as well as spiritual power capable of raising considerable military forces. In addition, with the rise of Islam, a new force, with its own concept of just war, was challenging the Church and Christian West.

The Church attempted--with some success--to limit the number of days in the year Christians could fight each other. More importantly, rights of noncombatants and innocents were promulgated and defended both by Church decree and more informal codes of chivalry and in later years, certain types of weapons were banned. These rules, however, pertained to Christians and did not necessarily cover war with non-Christians, especially Muslims.

⁶ O'Gara, p. 19, Holmes, p. 61.

Even here, codes of chivalry held some sway.⁷

The most authoritative voice on the theory of just war in the late Middle Ages was St. Thomas Aquinas, who--albeit briefly--considered the question in his Summa Theologia. Rejecting the idea that might makes right, Aquinas posited three conditions for just war: sufficient cause, proper authority, and right intention. The key for Aquinas was intentions: whatever the horrors, a war was just if the intention of its prosecutors was to bring peace and justice.⁸

Secularization

The Augustinian/Thomistic approach tended to dominate thinking on just war for the next four centuries. Renaissance humanism might substitute natural law for Christian mercy and in the case of Machiavelli question the basic assumptions of any concept of just war or, for that matter, morality in politics. Similarly, the Reformation may challenge the authority of Rome to set the limits of just war. Still, no less a symbol of the Renaissance than Erasmus would posit the concept of jus ad bellum and both Luther and Calvin would return to the basic arguments of Augustine and even Aquinas.

Where both the Renaissance and Reformation influenced the

⁷ Ramsey, p.p. 32-33, O'Gara, pp. 24-25. By the late Middle Ages, the number of legal days of war a year would be limited to around 40; crossbows and longbows would also be banned; later crossbows would be allowed but only with wooden, not metal bolts. In some cases, this favored the status quo, i.e., monarchy and feudal knights over the new bourgeoisie; in others--the English longbow--one country over another.

⁸ O'Gara, p. 30.

concept of just war was the secularization of the idea rather than the basics or criteria. Natural law became the basic justification rather than faith or mercy. And while Luther and Calvin defended the legitimacy of established authority, Protestantism's emphasis on individual faith and interpretation of the Gospels tended to further erode authority. This was important for one of the key aspects of pre-Reformation thought was that the individual was not in a state of sin if in good conscience he followed the orders of superior authority, i.e., his liege. Protestantism put responsibility back on the individual.

Moreover, the Augustinian/Thomistic tradition had never fully eradicated the pacifist strain in Christianity as seen in the teachings of Assisi and even "heretical" groups like the Waldensians. This counter culture found new expression in the Reformation, especially with Anabaptist groups like the Amish, Mennonites, and Quakers.

Nevertheless, by the early 1700s a set of criteria for justifying war and governing its execution had emerged, largely divorced from either Catholicism or Protestantism, founded increasingly in secular arguments. The next two centuries would see the refinement of these principles, especially in regard to the prosecution or rule of war. Increasingly, the "how" of war would eclipse the "why." In time, the ideas of jus ad bellum and jus in bello would be exported as a byproduct of European imperialism and by the mid-1900s become a basis of international law.

Just War and the Gulf

To be "just" in the traditional sense, the decision to go to war must meet no less than seven criteria: just cause, right authority, right intention, proportionality of ends, last resort, reasonable hope of success, and goal of peace. How did the US decision first to oppose and then attack Iraq meet this criteria?

Just Cause. The key issue here is what or who is being protected or preserved, and it cuts to the heart of the dilemma faced by Christians. As Paul Ramsey has noted, self-interest or self-preservation is not enough.⁹ The Christian must turn the other cheek. However, the Christian--and by implication, any right thinking individual--is equally bound to protect and defend others. Thus, Secretary of State Baker's justification of US opposition to Iraq's invasion of Kuwait on the grounds that Iraqi domination of the Gulf threatened US jobs and economic well-being did not meet the criteria of just war. Significantly, however true it may have been, it met with little favor in the U.S. while the Bush Administration's contention that Kuwaiti sovereignty and well-being must be defended was generally accepted despite the fact that some harbored real reservations about the deposed Kuwaiti monarchy.

Right Authority. As noted, the question of who authorized or decided to go to war was of paramount importance to Augustine and Aquinas for it ultimately established responsibility. The legitimate authority's main duty was to decide, the soldier's to

⁹ Paul Ramsay, Basic Christian Ethics (New York: Basic Books, 1963), pp. 234-9.

obey. In the Gulf war, the Bush Administration gets high marks even in this age of democracy. The White House went to great lengths to ensure that Congress was on board. This may have only been good politics, but it nonetheless strengthened the Administration's case for jus ad bellum. Moreover, even before the US Senate vote, it got a UN condemnation of the Iraqi invasion, imposition of UN sanctions and, finally, UN endorsement of the use of force.

Right Intention. This criterion is closely related to just cause. While just cause provides the reason for going to war, right intention provides the goals or reason for fighting. On August 6, 1990, President Bush laid out US intentions in the Gulf: protect US lives, restore stability to the region, reinstate the Kuwaiti government, and eject the Iraqis from Kuwait. On the face of it, these four points would seem to meet the definition of right intention and even justify use of force. In the course of the war, however, some questions arose as to whether these were the US's only goals. Was killing Saddam Hussein and destroying the Iraqi armed forces and industrial base, indeed, dismantling Iraq, part of some unstated agenda? The evidence would seem to say no. While it is always risky to impute intentions from results, especially in war and politics, it is safe to say that if Hussein had been the target of the US actions, the military campaign would have been handled considerably differently. Once Iraqi forces were out of Kuwait, the fighting stopped and coalition forces quickly withdrawn from Iraq. The Iraqi war machine was smashed, but this

was more a means to an end--including regional stability, another war goal--than an end in itself.

Proportionality of Ends. The question here is whether the good achieved by the war outweighs the harm it caused. Is the loss of life and property worth it? It may be the most subjective and value-laden of all the criteria. It is also the one most open to questions of short vs. long term expense, economic vs. other considerations, including human suffering. For some--committed pacifists, for example--no end can justify war. Whether the intended ends are actually attained is not of paramount importance. This criterion, like the others, is to be applied before resorting to war; the emphasis is thus on intentions and expectations, not necessarily results.

The US decision in the Gulf would seem to meet this criteria. Stated US--and UN--objectives were to restore the status quo ante bellum, not destroy Iraq. Violence was used as a counter to violence, not necessarily to punish or seek revenge--at least not as formal policy. Against the suffering of Iraqis was the suffering of the Kuwaitis.

Last Resort. In terms of the theory of just war, this may be the weak link in the US case for going to war in the Gulf. This criterion demands that all other means of achieving the intended ends be exhausted before resorting to war. It was precisely this point that created so many doubts in the Congress and UN and revolved around whether sanctions or diplomacy had been given a fair chance. From the start, the French and Soviets attempted to

find diplomatic solutions; indeed, Moscow persisted until the very eve of the war.¹⁰ The US did try other means for the better part of six months, but the ultimate decision to go to war raises the question of whether the Administration was only buying time to prepare for war. Secretary of State Baker did make an eleventh hour effort but again it is fairly clear this was no a serious attempt to get a diplomatic solution. By late 1990, it was a common perception in Washington that a serious Iraqi negotiation offer would be an embarrassment. In fairness, however, the criterion of last resort does not demand appeasement or compromise of valid goals.

Reasonable Hope of Success. To be just, a war has to have a reasonable chance of attaining its objectives. The gallant gesture is not enough to justify battle. While it is once again dangerous to identify results with intentions, the quick defeat of Iraqi forces and attainment of the stated US/coalition goals argues that this criterion was met. Careful preparation of the means of war assured this. The one remaining question was how realistic was the goal of regional stability and peace. Subsequent developments, especially in the Arab-Israeli sphere, suggests that even here there was reason to expect that the resulting situation would be no worse than what had gone before.

¹⁰ Just how serious Soviet last minute efforts were is open to debate. Gorbachev was under some domestic pressure to take an independent position from Washington and may have simply been going through the motions to keep his critics happy. In any case, he was in constant contact with the White House, assuring the President that he had no intention of spiking US efforts.

Aim of Peace. The main issue here is whether there was some consideration given for war termination and establishment of a stable and just peace before going to war or would that decision only lead to continuing violence? Again, the accent is on intentions rather than actual results. And again, we cannot help but be influenced by hindsight. Still, the US and UN established a basis for war avoidance and then termination early on: Iraqi withdrawal from Kuwait and regional negotiations. How serious the US can be debated but the initiative ultimately rested with the Iraqis. In terms of the larger region, the US refused to let Gulf negotiations to be formally linked with Arab-Israeli issues, but did agree to address both issues once Kuwait was liberated. When it once resorted to force, the US made sure that Iraqi military capabilities were sufficiently devastated so that it would not pose a threat to its neighbors. It attempted, however, to preserve the regional balance of power of which Iraq is a part. Where the US might be faulted is that it left Hussein in power. But to have done otherwise would have raised problems with the other criteria of just war. Another questionable area relates to the internal Iraqi situation. The war--especially US informational and propaganda efforts--raised minority expectations in Iraq and led to open revolt and bloodshed which persists and, in the case of the Kurds, threatens to spread across Iraqi borders.

Means vs. Ends

As noted earlier, just war theory deals with the means of waging war--jus in bello--as well as the ends. Simply put, how war

is waged can be as important as why it is fought. Wrong or unethical means can obviate correct or ethical ends. In fact, this aspect of just war has probably had more influence in the modern era than jus ad bellum in that it is the basis for internationally recognized codes of conduct and conventions of war. The two traditional criteria of jus in bello are proportionality of means and discrimination. Both can be applied to the Gulf war.

Proportionality of means asks whether more force was used than needed to achieve the desired ends, whether there was more human suffering than absolutely required. While a short war is not necessarily seen as inherently better, the implication is that fighting should not drag on longer than needed. At first glance, US use of military force against Iraq might be seen as excessive. But again the key question is intent. US military planners concluded that the quickest way to end the war and to reduce casualties on both sides was to hit hard and fast with overwhelming force. That this also served domestic political requirements is incidental. All available means were not used even though it could be argued that they might have reduced US losses. Moreover, once the stated goals were attained, use of force ceased. Ironically, US decision to terminate the fighting without eliminating Hussein or taking Baghdad has come in for more criticism than its actual use of force.

The principle of discrimination applies to the protection of noncombatants and, by extension, choice of targets. In an age of total war it has been the most controversial of all the just war

criteria. New technologies have figured large in these debates and will no doubt continue to raise new questions about use, R & D and procurement. The main idea is that noncombatants are not to be the primary target of war. A war of mass terror or population extermination cannot be considered just. Civilians will inevitably suffer in war, however but this must be the residual or unavoidable result, not the primary intent. Bombing of war munitions factories can be justified, but not of hospitals and schools. US prosecution of the Gulf war would seem to meet this criterion. Non-military targets were hit but because they contributed to the larger war effort. Bombing was remarkably precise, mainly aimed at military targets, and often conducted at increased risk to US personnel in order to assure minimum noncombatant losses.

Applying Just War Theory

At this point it is only fair to ask how practical or realistic is the application of a theory of just war to the Gulf or any modern conflict? Is it perhaps an idea whose time has passed? Or can it be manipulated to get the desired results? Two points come to mind.

First, any ethical construct can only present general guidelines. Successful application must ultimately rest with the individual and the specific situation. Still, any ethical theory must be founded in reality and be able to be reasonably applied and tested. As with any theory, good ethics work.

What is striking about the criteria of just war considered here is how well they correlate with other, supposedly more

"realistic" policy guidelines.¹¹ As James Turner Johnson has noted, Weinberger's six requirements for successful use of force by the US mesh remarkably well with the traditional criteria for just war. The same can be said of Samuel Huntington's five prescriptions for American strategy.¹²

And what of the "practical?" In their essay on the effectiveness of military organizations, Millett, Murray and Watman set out seven tenets for strategic effectiveness. With one or two exceptions, each of these could fit under the jus ad bellum and jus in bello criteria. The two exceptions deal with structural or organizational, not substantive issues.¹³

Nor does the concept of just war run afoul of no less an authority than Clausewitz. Clausewitz's insistence that war is not an end in itself but rather the "continuation of policy with other means" in no way contradicts the principles of just war. Moreover, his emphasis on the need for political leaders to set the agenda fits quite well with the concept of right authority. And it is clear from his writings on economy of force, the need to analyze the "remarkable trinity" and target the enemies center of gravity, numerical superiority, and war termination that he would have little difficulty dealing with proportionality of ends and means,

¹¹ Lecture, National War College, 10/27/92.

¹² Samuel P. Huntington, American Military Strategy (Berkeley: U. of California Regents, 1986), pp. 14-17.

¹³ Allan R. Millett, Williamson Murray, & Kenneth H. Watman, "The Effectiveness of Military Organizations," in Millett & Murray, eds., Military Effectiveness, (New York: Allen & Unwin, 1988), Vol. I, pp. 6-12.

reasonable hope of success and aim of peace in just war theory. Indeed, one of Clausewitz's more striking comments--the need to reduce popular passions in war and limit the tendency to seek the absolute--cut to the core of jus in bello.¹⁴

Second, to ignore the ethical component simply because it is unclear or difficult is risky. Ethics, like politics, are as much a process as an end in themselves. And like politics, they often demand a choice between the lesser of evils. But to say that does not mean there is no good or evil, no right or wrong, that the trip is not necessary. In her play Watch on the Rhine, Lillian Hellman makes one of her characters choose between murdering an informer or seeing his anti-fascist comrades captured and killed. He decides to kill the informer, but in explaining what he must do to his son, he refuses to descend into some crude form of situational ethics. He readily admits that his act is wrong but insists that it is necessary and the lesser evil--and takes responsibility for his decision and action. Such is the essence of ethical--and political--choice. And it is what separates us from the ants.

¹⁴ Carl von Clausewitz, On War, ed. & trans. by Michael Howard & Peter Paret (Princeton: Princeton University Press, 1976), pp. 69, 89, 213, 607-9, 204, 135, 585-6 & 601.